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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOEY CARDIEL,

Defendant.

CASE NO. 1:22-CR-00041-NODJ-BAM

**STIPULATION TO CONTINUE HEARINGS
AND ORDER**

STIPULATION

The United States of America, by and through its counsel of record, and defendant Joey Cardiel, by and through defendant's counsel of record, hereby stipulate as follows:

1. On February 10, 2022, a grand jury indicted the defendant with one count under 18 U.S.C. § 922(g)(1), felon in possession of a firearm. On March 4, 2024, the defendant filed a Motion to Dismiss the Indictment under *Bruen*, a motion to suppress statements under *Miranda*, and a motion to suppress evidence under the Fourth Amendment. The government filed its opposition to all three motions on April 1, 2024, and the hearing on the motions is set for May 28, 2024. [ECF 40] Time has been excluded through May 28, 2024, by stipulation of the parties.

2. On May 9, 2024, a panel of the Ninth Circuit issued its decision in *United States v. Duarte*, -- F.4th --, 2024 WL 2068016 (9th Cir. 2024). *Id.* at *24. Five days later, the government filed a petition

1 for rehearing *en banc* and requested that the Ninth Circuit consider and grant its petition on an expedited
2 basis, and vacate the *Duarte* panel decision so that it is no longer precedential. See *Duarte*, C.A. No. 22-
3 50048, Dkt. 72 (9th Cir. May 14, 2024). On May 16, 2024, the Ninth Circuit issued an order requesting
4 that the defendant-appellant file a response to the government's rehearing petition within 14 days, as
5 opposed to the ordinary 21 days that is provided for a response.

6 3. Given the strong grounds for seeking rehearing in *Duarte*, the fact the government has
7 already filed its petition for rehearing *en banc* on an expedited basis, and the Ninth Circuit has called for
8 a response, the parties agree that a continuance of the hearing on the motion to dismiss is therefore
9 warranted.

10 4. The defendant also wishes to continue all motion hearings rather the splitting them in the
11 interest of judicial economy. The government does not object to this approach.

12 5. Accordingly, the parties agree to continue the May 28, 2024, hearing until July 1, 2024.

13 6. The parties agree that the Court has authority to continue the motions under its power to
14 control its own docket. *Clinton v. Jones*, 520 U.S. 681, 706 (1997) ("The District Court has broad
15 discretion to stay proceedings as an incident to its power to control its own docket.").

16 7. The parties also agree that the interests of justice served by granting this continuance
17 outweigh the best interests of the public and the defendant in a speedy trial. The parties agree that the
18 period from May 28, 2024, through July 1, 2024, should be excluded. Fed. R. Crim. P. 17.1; 18 U.S.C. §
19 3161(h)(7)(A) and (h)(7)(B)(iv).

20 IT IS SO STIPULATED.

21 Dated: May 21, 2024

PHILLIP A. TALBERT
United States Attorney

22
23 By: /s/ Cody Chapple
ANTONIO J. PATACA
24 CODY S. CHAPPLE
Assistant United States Attorney

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26 Dated: May 21, 2024

/s/ Eric V. Kersten
ERIC V. KERSTEN
27 Attorney for Defendant,
28 JOEY CARDIEL

ORDER

IT IS HEREBY ORDERED for good cause shown, to provide defendant with reasonable time for effective preparation, and for defendant to consider a pre-trial resolution to the case that the hearing set for May 28, 2024, is continued to July 8, 2024. The period from May 28, 2024, through July 1, 2024, shall be excluded pursuant to Fed. R. Crim. P. 17.1; 18 U.S.C. § 3161(h)(7)(A) and (h)(7)(B)(iv).

IT IS SO ORDERED.

Dated: **May 21, 2024**


UNITED STATES DISTRICT JUDGE